

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: )  
 )  
EASTERN LIVESTOCK CO., LLC, ) Case No. 10-93904-BHL-11  
 )  
Debtor. )

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT**  
**WITH FORT PAYNE STOCK YARD, INC.**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee ("Trustee") for the bankruptcy estate ("Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and Fort Payne Stock Yard, Inc. ("Fort Payne") pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit "A" (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

**Introduction and Background**

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On January 25, 2012, the Trustee filed the Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement [Doc. No. 977] (the "Preference Protocol Motion"). The Court entered its Order Granting Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement on February 15, 2012 [Doc. No. 1035] (the "Preference Protocol Order"), pursuant to which the Court authorized the Trustee to settle the Trade Preferences<sup>1</sup> in the sums of the Estimated Net Exposure without further order of the Court.

4. Based on his investigation, the Trustee concluded that Fort Payne received not less than \$88,977.40 in transfers from the Debtor (collectively, the "Transfers").

5. The Trustee commenced Adversary Proceeding No. 12-59132 against Fort Payne on December 20, 2012 to avoid and recover the Transfers from Fort Payne ("Preference Claim"). Subsequent to December 20, 2012, Fort Payne has provided information to the Trustee and has asserted defenses that arguably and significantly reduce Fort Payne's Estimated Net Exposure.

### **The Settlement**

6. To avoid the cost, expense, and delay of further litigation, Fort Payne is willing to make payment of \$20,000.00 (the "Settlement Amount") within sixty (60) days

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning set forth in the Preference Protocol Motion.

from September 5, 2014, in satisfaction of the Preference Claim, provided the Court enters a final, non-appealable order approving this Settlement Motion.

7. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Recovery Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

8. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the Preference Claim in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

9. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Fort Payne pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

#### **Basis for Relief**

10. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the "best interests of the estate" test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are

the litigation's probability of success, complexity, expense, inconvenience, and delay, "including the possibility that disapproving the settlement will cause wasting of assets."

*In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d at 426 (citations omitted).

11. Although the Trustee believes there is legal and factual support for the Preference Claim, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor's estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the expenses the Debtor's estate would incur in litigating the Preference Claim, (ii) the probability of success in prosecuting the Preference Claim in light of the asserted defenses, and (iii) the best interests of the Debtor's estate and its creditors.

12. Pursuant to the exercise of his sound business judgment, the Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate.

13. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit "A" and grant the Trustee all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

By: /s/ Jay P. Kennedy  
Jay P. Kennedy (#5477-49)  
Counsel for James A. Knauer,  
Chapter 11 Trustee  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204-5125  
Telephone: (317) 777-7428  
jpk@kgrlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on September 23, 2014, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt  
davidabt@mwt.net

Kay Dee Baird  
kbaird@kdlegal.com

C. R. Bowles, Jr  
cbowles@bgdlegal.com

Kent A Britt  
kabritt@vorys.com

Lisa Koch Bryant  
courtmail@fbhlaw.net

Deborah Caruso  
dcaruso@daleeke.com

Joshua Elliott Clubb  
joshclubb@gmail.com

Jack S. Dawson  
jdawson@millerdollarhide.com

David Alan Domina  
dad@dominalaw.com

Shawna M. Eikenberry  
shawna.eikenberry@faegrebd.com

Robert Hughes Foree  
robertforee@bellsouth.net

Thomas P. Glass  
tpglass@strausstroy.com

Paul M. Hoffman  
paul.hoffmann@stinsonleonard.com

Jeffrey L Hunter  
jeff.hunter@usdoj.gov

Todd J. Johnston  
tjohnston@mcjllp.com

Edward M King  
tking@fbtlaw.com

Theodore A. Konstantinopoulos  
ndohbky@jbandr.com

David L. LeBas  
dlebas@nmanhowell.com

Elliott D. Levin  
edl@rubin-levin.net

Karen L. Lobring  
lobring@msn.com

Harmony A. Mappes  
harmony.mappes@faegrebd.com

Kelly Greene McConnell  
lisahughes@givenspursley.com

William Robert Meyer, II  
rmeyer@stites.com

Allen Morris amorris@stites.com

Matthew Daniel Neumann

Amelia Martin Adams  
aadams@dlgfirm.com

Christopher E. Baker  
cbaker@thbklaw.com

David W. Brangers  
dbrangers@lawyer.com

Kayla D. Britton  
kayla.britton@faegrebd.com

John R. Burns, III  
john.burns@faegrebd.com

Ben T. Caughey  
ben.caughey@icemiller.com

Jason W. Cottrell  
jwc@stuartlaw.com

Dustin R. DeNeal  
dustin.deneal@faegrebd.com

Daniel J. Donnellon  
ddonnellon@ficlaw.com

Jeffrey R. Erler  
jerler@ghjhlaw.com

Sandra D. Freeburger  
sfreeburger@dsf-atty.com

Patrick B. Griffin  
patrick.griffin@kutakrock.com

John David Hoover  
jdhoover@hooverhull.com

Jay Jaffe  
jay.jaffe@faegrebd.com

Jill Zengler Julian  
Jill.Julian@usdoj.gov

James A. Knauer  
jak@kgrlaw.com

Randall D. LaTour  
rdlatour@vorys.com

Martha R. Lehman  
mlehman@kdlegal.com

Kim Martin Lewis  
kim.lewis@dinslaw.com

Jason A. Lopp  
jlopp@wyattfirm.com

John Frederick Massouh  
john.massouh@sprouselaw.com

James Edwin McGhee  
mcghee@derbycitylaw.com

Kevin J. Mitchell  
kevin.mitchell@faegrebd.com

Judy Hamilton Morse  
judy.morse@crowedunlevy.com

Walter Scott Newbern

John W. Ames  
james@bgdlegal.com

Robert A. Bell  
rabell@vorys.com

Steven A. Brehm  
sbrehm@bgdlegal.com

Joe Lee Brown  
Joe.Brown@Hardincounty.biz

John R. Carr, III  
jrciii@acs-law.com

Bret S. Clement  
bclement@acs-law.com

Kirk Crutcher  
kcrutcher@mcs-law.com

Laura Day Delcotto  
ldelcotto@dlgfirm.com

Trevor L. Earl  
tearl@rwsvlaw.com

William K. Flynn  
wkflynn@strausstroy.com

Melissa S. Giberson  
msgiberson@vorys.com

Terry E. Hall  
terry.hall@faegrebd.com

John Huffaker  
john.huffaker@sprouselaw.com

James Bryan Johnston  
bjtexas59@hotmail.com

Jay P. Kennedy  
jpk@kgrlaw.com

Erick P. Knoblock  
eknoblock@daleeke.com

David A. Laird  
david.laird@moyewwhite.com

Scott R. Leisz  
sleisz@bgdlegal.com

James B. Lind  
jblind@vorys.com

John Hunt Lovell  
john@lovel-law.net

Michael W. McClain  
mmclain@mcclaindeweese.com

Brian H. Meldrum  
bmeldrum@stites.com

Terrill K. Moffett  
kendalcantrell@moffettlaw.com

Erin Casey Nave  
enave@taftlaw.com

Shiv Ghuman O'Neill

mneumann@hhclaw.com  
Matthew J. Ochs  
kim.maynes@moyewhite.com  
Ross A. Plourde  
ross.plourde@mcafeetaft.com  
Timothy T. Pridmore  
tpridmore@mcjllp.com  
Eric W. Richardson  
ewrichardson@vorys.com  
Mark A. Robinson  
mrobinson@vhlaw.com  
Joseph H. Rogers  
jrogers@millerdollarhide.com  
Niccole R. Sadowski  
nsadowski@thbklaw.com  
Ivana B. Shallcross  
ishallcross@bgdlegal.com  
James E. Smith, Jr.  
jsmith@smithakins.com  
Joshua N. Stine  
kabritt@vorys.com  
Meredith R. Theisen  
mtheisen@daleeke.com  
Christopher M. Trapp  
ctrapp@rubin-levin.net  
Andrew James Vandiver  
avandiver@aswdlaw.com  
Stephen A. Weigand  
sweigand@ficlaw.com  
Michael Benton Willey  
michael.willey@ag.tn.gov

wsnewbern@msn.com  
Jessica Lynn Olsheski  
jessica.olsheski@justice-law.net  
Brian Robert Pollock  
bpollock@stites.com  
Anthony G. Raluy  
traluy@fbhlaw.net  
Joe T. Roberts  
jratty@windstream.net  
Jeremy S. Rogers  
Jeremy.Rogers@dinslaw.com  
James E. Rossow jim@rubin-levin.net  
Thomas C. Scherer  
tscherer@bgdlegal.com  
Sarah Elizabeth Sharp  
sarah.sharp@faegrebd.com  
William E. Smith, III wsmith@kglaw.com  
Andrew D. Stosberg  
astosberg@lloydmc.com  
John M. Thompson  
john.thompson@crowedunlevy.com  
Chrisandrea L. Turner  
clturner@stites.com  
Andrea L. Wasson  
andrea@wassonthornhill.com  
Charles R. Wharton  
Charles.R.Warton@usdoj.gov  
Jason P. Wischmeyer  
jason@wischmeyerlaw.com

shiv.oneill@faegrebd.com  
Michael Wayne Oyler  
moyle@rwsvlaw.com  
Wendy W. Ponader  
wendy.ponader@faegrebd.com  
Eric C. Redman  
ksmith@redmanludwig.com  
David Cooper Robertson  
crobertson@stites.com  
John M. Rogers johnr@rubin-levin.net  
Steven Eric Runyan  
ser@kgirlaw.com  
Stephen E. Schilling  
seschilling@strausstroy.com  
Suzanne M Shehan  
suzanne.shehan@kutakrock.com  
Amanda Dalton Stafford  
ads@kgirlaw.com  
Matthew R. Strzynski  
indyattorney@hotmail.com  
Kevin M. Toner  
kevin.toner@faegrebd.com  
U.S. Trustee  
ustpreion10.in.ecf@usdoj.gov  
Jennifer Watt  
jwatt@kgirlaw.com  
Sean T. White  
swhite@hooverhull.com  
James T. Young james@rubin-levin.net

I further certify that on September 23, 2014, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Thomas Richard Alexander, II  
tra@rgba-law.com

/s/ Jay P. Kennedy  
Jay P. Kennedy, Attorney No. 5477-49  
Counsel for James A. Knauer, Trustee

**KROGER, GARDIS & REGAS, LLP**  
111 Monument Circle, Suite 900  
Indianapolis, Indiana 46204-5125  
(317) 692-9000 Telephone